No. 79-1777

In The Supreme Court of the United States

October Term, 1980

COMPLETE AUTO TRANSIT, INC., *et al.*,

Petitioners,

v.

DANNY REIS, *et al.*,

Respondents.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

MOTION FOR LEAVE TO FILE A BRIEF AS AMICUS CURIAE AND BRIEF FOR THE AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS, AS AMICUS CURIAE

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MOTION BY THE AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS FOR LEAVE TO FILE A BRIEF AMICUS CURIAE

The American Federation of Labor and Congress of Industrial Organizations (AFL-CIO), respectfully moves this Court for leave to file the accompanying brief *amicus curiae* in support of the position of the respondents in this case.

INTEREST OF THE AFL-CIO AND THE ISSUE TO BE COVERED IN THE AFL-CIO'S BRIEF AMICUS CURIAE

The issue presented here concerning the right of employers to bring § 301 * damage actions against individual em-

* Section 301 of the Labor Management Relations Act of 1947, 29 U.S.C. 185.

ployees, viewed as one of pure policy, is from the labor movement's perspective both sensitive and difficult. On the one hand, the prospect that employers, in addition to the other powers vouchsafed them, should be able to bring economically ruinous damage actions against individual employees who engage in concerted activity not protected by § 7 ** —even activity not authorized by their exclusive bargaining representative—is anathema. On the other, such wildcat activity undermines the very collective bargaining system that produces collective agreements and the employee benefits they provide and that is vastly preferable to any other system of industrial relations.

The petition for a writ of certiorari, the brief in opposition thereto and petitioners' brief treat the issue in this case as one that Congress did not focus on and which must therefore be decided with only the overall national labor policy as a guide. Given the conflicting pulls on our loyalties, if that assessment were accurate we would have little if anything to add to the discussion. But we disagree with that reading of the legislation, and its history. Our review of the relevant materials in the attached brief *amicus curiae* shows that the sponsors of § 301 and of its antecedent, § 10 of the Case bill (H.R. 4908, 79th Cong., 2d Sess.), made a considered judgment that precluding employer damage suits against individual employees was necessary "to get anywhere in this workmen's legislative problem". (Hearings before the Committee on Education and Labor on Amendments to the National Labor Relations Act, 80th Cong., 1st Sess. (1947) at 136 (Rep. Case).) Since that legislative judgment, rather than an *ad hoc* balancing of the conflicting interests of employees, of employers, and

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** Section 7 of the Labor Management Relations Act of 1935, 29 U.S.C. 157.

of the collective bargaining system controls this case, we file this brief to place the full legislative record before the Court.

CONCLUSION

For the above stated reasons this motion for leave to file a brief *amicus curiae* should be granted.

Respectfully submitted

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BRIEF FOR THE AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS, AS AMICUS CURIAE

This brief *amicus curiae* is filed contingent on the granting of the foregoing motion for leave to file said brief. The interest of the AFL-CIO in this case is set forth in that motion.

INTRODUCTION AND SUMMARY OF ARGUMENT

The question in this case is whether a § 301 [1] damage

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[1] Section 301 of the Labor Management Relations Act of 1947, 29 U.S.C. § 185, which provides:

> "(a) Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

action will lie against individual employees who have engaged in a concerted work stoppage not authorized by their exclusive bargaining representative that occurs during the term of a collective agreement containing a clause forbidding strikes.

The answer to that question is to be determined as a matter of "federal law, which the courts must fashion from the policy of our national labor laws." (*Textile Workers* v. *Lincoln Mills,* 353 U.S. 448, 456.) The Court there described the process of analysis as follows:

"(b) Any labor organization which represents employees in an industry affecting commerce as defined in this chapter and any employer whose activities affect commerce as defined in this chapter shall be bound by the acts of its agents. Any such labor organization may sue or be sued as an entity and in behalf of the employees whom it represents in the courts of the United States. Any money judgment against a labor organization in a district court of the United States shall be enforceable only against the organization as an entity and against its assets, and shall not be enforceable against any individual member or his assets.

"(c) For the purposes of actions and proceedings by or against labor organizations in the district courts of the United States, district courts shall be deemed to have jurisdiction of a labor organization (1) in the district in which such organization maintains its principal office, or (2) in any district in which its duly authorized officers or agents are engaged in representing or acting for employee members.

"(d) The service of summons, subpena, or other legal process of any court of the United States upon an officer or agent of a labor organization, in his capacity as such, shall constitute service upon the labor organization.

"(e) For the purposes of this section, in determining whether any person is acting as an 'agent' of another person so as to make such other person responsible for his acts, the question of whether the specific acts performed were actually authorized or subsequently ratified shall not be controlling."

> The Labor Management Relations Act expressly furnishes some substantive law. It points out what the parties may or may not do in certain situations. Other problems will lie in the penumbra of express statutory mandates. Some will lack express statutory sanction but will be solved by looking at the policy of the legislation and fashioning a remedy that will effectuate that policy. [*Textile Workers,* 353 U.S. at 457, reaffirmed in *Howard Johnson Co.* v. *Hotel Employees,* 417 U.S. 219, 225]

This approach was followed in *Atkinson* v. *Sinclair Refining Co.,* 370 U.S. 238, which "hold[s]" that § 301(b), which in terms bars only the collection from individuals of judgments against a union, evidences a "national labor policy" that "when a union is liable for damages for violation of [a] no-strike clause, its officers and members are not liable for these damages," (*id.* at 249). That conclusion, the Court said, is "require[d]" by

> The legislative history of § 301(b) [which] makes it clear that [the Section's] third clause was a deeply felt congressional reaction against the *Danbury Hatters* case (*Loewe* v. *Lawlor,* 208 U.S. 274; *Lawlor* v. *Loewe,* 235 U.S. 522), and an expression of legislative determination that the aftermath (*Loewe* v. *Savings Bank of Danbury,* 236 F. 444 (C.A. 2d Cir.)) of that decision was not to be permitted to recur. . . . In the debates, Senator Ball, one of the Act's sponsors, declared that § 301, "by providing that the union may sue and be sued as a legal entity, for a violation of contract, and that liability for damages will lie against union assets only, will prevent a repetition of the Danbury Hatters Case, in which many members lost their homes" (93 Cong. Rec. 5014). [370 U.S. at 248.]

The *Atkinson* Court expressly left open the question whether a claim under § 301(a) would lie "if it charged unauthorized, individual action," *viz.,* a work stoppage by

individuals "acting not on behalf of the union but in their personal and non-union capacity." (*Id.* at 249 n. 7.) And, in this case, petitioners urge this Court to answer that open question by holding that the Congressional policy protecting individual employees against damage suits is limited to the situation where the union has authorized the strike and is therefore open to liability.

The distinction which petitioners urge cannot be justified, even in theory, on the view that Congress wished to protect individuals against damages only where the employer is able to obtain a monetary recovery against the union. In *Atkinson* the Court directed that the count for damages against the individuals "must be dismissed on the merits for failure to state a claim upon which relief can be granted" (*id.* at 245), even though at that time the Court could not have known whether the union would have sufficient funds to pay any judgment ultimately rendered on the other count of the complaint, which named the union as a defendant. Nor do petitioners provide an explanation of why Congress would adopt a policy leaving individual employees vulnerable to damage suits simply because they join an unauthorized strike, even though they are not subject to such suits if as union agents they *cause* the strike for which the union is liable. And petitioners' position would enable employer-plaintiffs to name the union and all the striking employees as defendants and to allege in the alternative that a strike was, and was not, authorized by the union. Even in the cases squarely covered by *Atkinson*—those in which the strike is authorized—this would cut into the protection § 301(b) was concededly enacted to provide, by requiring the individuals to finance the defense of the employer claim against them.

Petitioners moreover simply assume an essential predi-

cate of their claim—that a collective agreement creates legally enforceable duties against the covered employees who, of course, are not signatories, as well as against the signatories, the employer and the union. It is, as the *Atkinson* Court stated, "universally accepted that the no-strike clause in a collective agreement at the very least establishes a rule of conduct or condition of employment the violation of which by employees justifies discipline or discharge." (*Id.* at 246; see also the cases there cited.) But there is no indication that Congress considered employees to be obligors under such agreements. Indeed, with narrow exceptions, both the common law of contracts and § 301 require a manifestation of consent to make a person a party to an agreement and reject the notion that non-signatories are parties. (See *Howard Johnson*, 417 U.S. at 253 256.)[2]

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[2] To be sure, *Smith* v. *Evening News Assn.*, 371 U.S. 195, 200-201, holds that "suits by employees for breach of a collective bargaining contract . . . arise[] under § 301. . . ." But it does not follow, as petitioners contend (Pet. Br. 18-22), that employees are "parties" to such agreements. The common law, through the third party beneficiary doctrine, has long permitted non-signatories to sue on, as opposed to being sued on, a contract. Moreover, the *Smith* Court, in rejecting the contention that such employee suits do not arise under § 301(a), relied on the "language and structure" of the Section and stressed that a restrictive interpretation . . . would frustrate rather than serve the congressional policy expressed in § 301." (*Id.* at 200.) The decision in *Smith* did not turn on characterizing the employee-plaintiffs as "parties;" indeed, as we show below (pp 9-10), Congress' basic premise in enacting § 301 was that the "parties" to collective agreements are the signatory employers and unions.

So too in *Hines* v. *Anchor Motor Freight*, 424 U.S. 554, 562, which like *Smith* involved an employee § 301 suit against an employer, the Court observed in passing "Section 301 contemplates suits by and against individual employees as well as between unions and employers. . . ." Giving that passage full force would not lead

The most analogous common law exception to that rule—that providing that a contract signed by an agent binds the principal—does not fit in the labor law context. For the premise of the common law of agency does not accurately mirror the relationship between the exclusive bargaining representative and the employees in the bargaining unit. (Cf. *Elgin, J.&E.R. Co.* v. *Burley,* 327 U.S. 661, 663.) The former is based on the principal's individual decision denominating another to act for him; the latter is based on the rule of public law that the union selected by the *majority* of an appropriate employees unit is the representative of *all.*

But these logical and doctrinal difficulties with petitioners' claim need not detain us, for that claim is subject to a more conclusive objection: Congress clearly determined, in enacting § 301, that a suit for damages against individual employees would not lie thereunder. Petitioners are mistaken in the assertion on which they rest their contention that the court below erred:

> There is nothing in the legislative history that supports the "conclusion" of the Appeals Court that Congress intended to extend [the] protection [recog-

to petitioners' position—*Hines* does not state that § 301 contemplates employer *damage* suits against individual employees. In the instant case the employer-plaintiffs sought both injunctive relief and damages against the employee-defendants, and the employers were granted an injunction in the lower courts. *Hines* appears to presage approval of such judicial action. But that issue is not now before the Court, for that injunction is not challenged here. And, for the reasons we develop in the text, when the question of the propriety of § 301 employer injunction actions against individual employees is presented the Court may wish to reconsider the *Hines dictum.* The sole support cited for the sentence in question was *Smith,* which, as we have noted, did not decide that individual employees are parties to collective agreements, and § 301's legislative history reveals that Congress did not so regard them.

> nized in *Atkinson*] to individuals who act in their own individual capacity and not as agents of their union. [Pet. Br. 14.]

On the contrary, the legislative history demonstrates unequivocally that Congress focused on the question of individual employee liability for damages under what became § 301 and consciously precluded such liability. Three major lessons emerge from that legislative history:

First, Congress' purpose in § 301 was to make unions suable for breaches of their contracts. Section 301 was aimed at the common law rule precluding suit against unincorporated associations—a rule which, Congress felt, enabled unions to escape responsibility for breaching collective agreements.

Second, Congress affirmatively decided *not* to impose liability for damages on individual employees. In part, Congress sought to prevent a *Danbury Hatters* situation from recurring—*viz.*, a situation in which union members were held personally liable for the actions of their union. But the congressional concern went further: Congress reached the overall conclusion that individual employees should not be subjected to the risk of financial ruin at the hand of their employer even where the result is that the employer does not recover damages.

Third, to assure employers the means to protect themselves Congress instead made clear that employers have the right to discharge employees who engage in a wildcat strike.

ARGUMENT

In *Dowd Box Co.* v. *Courtney*, 368 U.S. 502, 509, this Court observed:

> The direct antecedent of § 301 [of the Labor Management Relations Act of 1947, P.L. 80-101, 61 Stat. 136]

> was §10 of the Case bill, H.R. 4908, 79th Cong., 2d Sess., which was passed by both Houses of the Congress, but vetoed by the President in 1946.

And, following the lead of that opinion (see *id.* at 509-513), we begin our description of § 301's legislative history by tracing the evolution of § 10 of the Case bill.[3]

A. The Case Bill

1. *House Consideration*

In December, 1945, President Truman sent a message to Congress requesting the enactment of a law to authorize the President, in the event of a labor dispute vitally affecting the public interest, to appoint a fact-finding board which would have the power to investigate the dispute and make recommendations; and to bar strikes and lockouts while the fact-finding board was at work.[4] The Committee on Labor conducted brief hearings on this proposal, and reported a bill (H.R. 4908) which would have provided for the appointment of such boards but would *not* have required a "cooling-off period." (See H.R. Rep. No. 1493, *supra.*)

During the floor debate on the Committee bill, Rep. Francis Case of South Dakota offered a substitute bill. (92 Cong. Rec. 836-38.) That bill would have established a "Labor-Management Mediation Board" with authority to mediate labor disputes "substantially affect[ing] the public interest" and to bar strikes and lock-outs for a thirty-day period while mediation was being attempted. (§§ 3-9, 92 Cong. Rec. 836-37.)

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[3] See also *Arroyo* v. *United States*, 359 U.S. 419, 425-427, where the Court, in construing § 302 of the LMRA, which also had its origins in the Case bill, looked to the history of that provision in the 79th, as well as the 80th, Congress.

[4] The text of the President's message is reprinted in H.R. Rep. 1493, 79th Cong. 2d Sess. (1946).

In addition, the Case bill contained several "miscellaneous provisions," including the antecedent of § 301.[5] The purpose of this provision—§ 10 of the Case bill—was explained in the preamble:

> The desired end of bargaining between management and labor is a contract. Once that contract is made, it must be equally binding and enforceable on both parties. [§ 2, 92 Cong. Rec. 836]

As Rep. Case put it during the debates, § 10 "seeks to establish a mutual responsibility when the collective-bargaining process has resulted in a contract." (92 Cong. Rec. 838.) Other proponents of his bill made similar statements, adding that such mutuality "does not now exist between labor and industry" in that "management has no redress in law" in the event a union breaches its agreement. (92 Cong. Rec. 662 (Rep. Andrews).)[6]

Section 10 provided in presently pertinent part: "All collective bargaining contracts shall be mutually and equally binding and enforceable . . . *against each of the parties*

[5] "Sec. 10. Binding effect of collective-bargaining contracts: All collective-bargaining contracts shall be mutually and equally binding and enforceable either at law or in equity against each of the parties thereto, any other law to the contrary notwithstanding. In the event of a breach of any such contract or of any agreement contained in such contract by either party thereto, then, in addition to any other remedy or remedies existing either in law or equity, a suit for damages for such breach or for injunctive relief in equity may be maintained by the other party or parties in any United States district court having jurisdiction of the parties. If the defendant against whom action is sought to be commenced and maintained is a labor organization, such action may be filed in the United States district court of any district wherein any officer of such labor organization resides or may be found."

[6] See also 92 Cong. Rec. 682 (Rep. Crawford), 684 (Rep. Jennings), 753 (Rep. Voorhis), 756 (Rep. McConnell), 771 (Rep. Robsion).

thereto." By "parties" the bill referred to the employers and the union, not the covered employees, as Rep. Case explained:

> I call attention to the fact that since the contracts are to be enforceable either at law or in equity against each of the parties thereto, that *an individual is not a party to a collective-bargaining contract, as far as labor is concerned. Relief granted will be toward the recognized bargaining agent rather than an individual, if the order applied to labor;* it might be an individual if the order were directed against the employer and he, as a contracting party were an individual. [92 Cong. Rec. 765 (emphasis added).]

All descriptions of § 10 during the House debates were in accord with Rep. Case's statement.[7] The House agreed to the Case substitute and passed the bill.

2. *Senate Consideration*

The House bill was transmitted to the Senate where it was referred to the Committee on Education and Labor. After conducted hearings the Committee reported a bill which did not include an analogue to § 10. But Senators Ball, Taft, and Smith filed a minority report in which they urged adoption of a number of amendments including "Amendment No. 3" which was similar to § 10 and even closer to what become § 301 of the LMRA.[8]

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[7] E.g. 92 Cong. Rec. 853 ("We do create, if there is any doubt about its present existence, an action for damages for breach of contract against a labor organization or an employer") (Rep. Voryls); *id.* at 767 (Rep. Burch); *id.* at 771 (Rep. Robsion); *id.* at 772 (Rep. Goodwin).

[8] "TEXT OF AMENDMENT NO. 3"

"Amend H.R. 4908 by inserting at the proper place the following new section:

"Sec.—(a) Suits for violation of a contract concluded as the

The proponents of "Amendment No. 3" explained the need therefore:

> The initial obstacle in enforcing the terms of a collective agreement against a union which has breached its provisions is the difficulty of subjecting the union to process. The great majority of labor unions are unincorporated associations and at common law voluntary associations are not suable as such. As a consequence

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result of collective bargaining between an employer and a labor organization is such contract affects commerce as defined in this Act may be brought in any district court of the United States having jurisdiction of the parties.

"(b) Any labor organization whose activities affect commerce as defined in this Act shall be bound by the acts of its duly authorized agents acting within the scope of their authority from the said labor organization and may sue or be sued as an entity and in behalf of the employees whom it represents in the courts of the United States: Provided, that any money judgment against such labor organization shall be enforceable only against the organization as an entity and against its assets, and shall not be enforceable against any individual member or his assets.

"(c) For the purposes of this section district courts shall be deemed to have jurisdiction of a labor organization (1) in the district in which such organization maintains its principal office, or (2) in any district in which its duly authorized officers or agents are engaged in promoting or protecting the interests of employee members. The service of summons, subpena or other legal process upon such officer or agent shall constitute service upon the labor organization.

"(d) Any employee who participates in a strike or other stoppage of work in violation of an existing collective-bargaining agreement, if such strike or stoppage is not ratified or approved by the labor organization party to such agreement and having exclusive bargaining rights for such employee, shall lose his status as an employee of the employer party to such agreement for the purposes of sections 8, 9, and 10 of the National Labor Relations Act: Provided, That such loss of status for such employee shall cease if and when he is reemployed by such employer. [Sen. Rep. 1177, 79th Cong., 2d Sess. Pt. II at 10-11 (1946) Minority Report)]

> the rule in all jurisdictions, in the absence of a statute, is that unincorporated labor unions cannot be sued in their common name. Accordingly, the difficulty of or impossibility of enforcing the terms of a collective agreement in a suit at law against a union arises from the fact that each individual member of the union must be named and made a party to the suit.
>
> * * *
>
> Even where unions are suable, the union funds may not be reached for payment of damages and any judgments or decrees rendered against the association as an entity may be unenforceable. However, only where statutes provide for recognition of the legal status of associations do association funds become subject to judgments.
>
> * * *
>
> It is apparent that until all jurisdictions, and particularly the Federal Government, authorize actions against labor unions as legal entities, there will not be the mutual responsibility necessary to vitalize collective-bargaining agreements. [S. Rep. No. 1177, 79th Cong., 2d Sess., Pt. 2 at 12-13 (Minority Views of Sen. Ball, Taft, and Smith) (citations omitted).]

The justification offered by the minority report for "Amendment No. 3" is of especial importance for an additional reason. The minority, of course, sought to hold labor unions responsible for the collective agreements they sign. (See pp. 11-12 *supra*.) But that purpose could have been accomplished without the proviso in subsection (b) of the amendment (stating that judgments against a union "shall not be enforceable against any individual member or his assets") and without subsection (d) (permitting an employer to discharge employees who engage in wildcat strikes). Those features were designed to serve other policies: to protect employees from financial ruin at the hands of their employers and at the same time to provide

employers with a remedy—discharge—against wildcat strikes.[9] The minority explained:

> The amendment specifically provides that only the assets of the union can be attached to satisfy a money judgment against it. The property of the individual members of the organization would become absolutely free from any liability under such a judgment. Thus the members of the union would secure all the advantages of limited liability without incorporation of the union.
>
> The proposed amendment relative to union liability specifically provides that a labor organization would be bound by the acts of its authorized agents only. Thus a labor organization would not be liable for damages arising as a result of an unauthorized strike carried on in violation of a contract. If a union or an officer thereof did not authorize the strike or support it, or subsequently approve it, no liability would be imposed on the union as a consequence of the work stoppage. *To protect the employer against work stoppages in violation of an agreement but not approved by the union, employees who take part in such strikes would lose their status as employees under sections 8, 9, and 10 of the National Labor Relations Act. The employer could refuse to rehire them after the strike.* Besides providing a remedy for the employer for irresponsible interruptions of production, such a provision would tend to strengthen sound union discipline. [*Id.* at 12 (emphasis added).]

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[9] The discharge remedy was the one on which the Case bill had relied to penalize individuals who engage in certain actions which the Case bill would have made unlawful, such as (1) violence or threats "to prevent any individual from quitting or continuing in the employment of . . . any employer" (§ 11, 92 Cong. Rec. 838); (2) secondary boycotts (§ 13, 92 Cong. 838); and (3) boycotts to compel an employer to recognize a union during the term of a collective bargaining agreement between that employer and another union (*id.*).

During the Senate floor debates on the Committee bill, Senator Taft offered "Amendment No. 3." (92 Cong. Rec. 5705.) His explanation of the amendment and its purposes paralleled the explanation in the minority report, emphasizing the aim of holding labor unions "responsible on their collective-bargaining contracts," of protecting individual union members from personal liability, and of providing employers with a remedy against individuals who engage in wildcat strikes. (*Id.*) At the close of his remarks Senator Taft offered the following summation:

> If the union violates its collective-bargaining agreement, it is responsible but no individual member is responsible, and he can in no way be deprived of his rights. But if the union tries to keep its contract, and in violation of its undertaking, some of its members proceed to strike, then the employer may fire those members and they do not have the protection of the Wagner Act. [*Id.* at 5705-06.]

And, in response to questioning, Senator Taft added that where an employee violates a collective agreement by refusing to work, "the *only* penalty is to take away his rights as an employee of that employer." (*Id.* at 5707 (emphasis added).)[10] After brief additional debate, the amendment was adopted by the Senate (*id.* at 5723), and shortly thereafter the Senate approved the Committee bill as amended (*id.* at 5723).

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[10] During the course of this debate Senator Taft engaged in the colloquy with Senator Capehart quoted at Pet. Br. 16-17, n. 13 and discussed by the Seventh Circuit in *Sinclair Oil Corp.* v. *Oil, Chemical & Atomic Workers, etc.*, 452 F.2d 49, 53 (C.A. 7). That court, we submit, was clearly right to reject Sinclair's reading of Senator Taft's response to the question Senator Capehart posed as allowing individual liability through employer damage suits rather than through union-imposed fines.

3. *The Senate Bill and the Presidential Veto*

Rather than convening a conference committee to resolve differences between the House and Senate bills, the House instead took up consideration of the Senate bill. Supporters of the Case bill advised the House that, with a few exceptions, there was not "anything . . . in this bill that the House has not previously substantially in the same language voted for in the bills that heretofore have been before the House." (92 Cong. Rec. 5926 (Rep. Smith).) With specific reference to the breach-of-contract provision, Rep. Case stated:

> All this section on suability does is to carry out the same purpose we had in the House bill, when we provided for making contracts actually binding upon both parties to it. It has been found that while a few States permit suing on a labor contract, many States do not. Unless you have some such provision in Federal law, collective bargaining contracts will not be good, in the words of the President, "for the lifetime of such contracts."
>
> So the Senate very carefully and properly drafted this provision in the way they did, to insure that "contracts", again in the words of President Truman, "once made must be lived up to" and "changed only in the manner agreed upon by the parties."
>
> Individual members of a union are not made liable for any money judgment, I might point out, but only the union as an entity. *If employees strike in violation of their agreement, the only individual penalty that can be employed is the forefeiture of their right to employment under that contract* which is cured when the employer reemploys them. [*Id.* at 5930-31 (emphasis added).]

Rep. Halleck made the same point:

> When the Case bill was before the House, the provisions in the contractual liability section were such as to lead some to urge—I thought wrongly—that the union would be responsible for the acts of the individual members of the union in going out on strike in violation of the union's wishes. The proposal that comes from the Senate makes it clear that the union is only responsible for the acts of its agents carried on under the scope of their authority.
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> • • •
>
> Mr. Speaker, there is substituted for that [the provision] which has to do with the responsibility of the individual who goes out on a wildcat strike in violation of a contract and in violation of the wishes of his organization. *All we say is that if he breaches his contract as an individual in that manner, his employer does not have to take him back unless he wants to. What is the matter with that?* [*Id.* at 5932 (emphasis added).]

Others referred to the contractual liability section as simply creating a cause of action against unions and employers. (*Id.* at 5939 (Rep. Robsion), 5942 (Rep. Slaughter), 5944 (Rep. Springer).) After brief debate, the House approved the Senate version of the bill. (*Id.* at 5946.)

On June 11, 1947, President Truman vetoed the bill and sent a message explaining his veto to the Congress. After the message was read, and without further debate, a vote was taken in the House on whether to override the veto; the attempt to override lost by only 5 votes. (*Id.* at 6674-78.)

B. The Labor Management Relations Act of 1947

Shortly after the Eightieth Congress convened, work began on a new and more comprehensive labor bill.

1. *House Consideration*

From February 5 to March 15, 1947, the House Committee on Education and Labor held 31 days of hearings on several bills that had been introduced. (Hearings Before the Committee on Education and Labor on Amendments to the National Labor Relations Act, 80th Cong., 1st Sess. (1947).) Only one of the bills before the Committee, H. R. 725 introduced by Rep. Case, contained a provision to establish federal jurisdiction over actions for breaches of collective agreements.[11] The language of the contract-action provision of the new Case bill differed somewhat from his prior bill (and from the Senate amendment which the House ultimately had adopted in the prior Con-

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[11] "EQUAL RESPONSIBILITY AND LIABILITY

"Sec. 305. (a) Suits for violations of contracts between an employer and a labor organization if such contracts affect commerce as defined in this Act may be brought by either party in any district court of the United States having jurisdiction of the parties.

"(b) Any labor organization whose activities affect commerce as defined in this Act shall be bound by the acts of its duly authorized agents acting within the scope of their authority, from the said labor organization and may sue or be sued as an entity and in behalf of the employees whom it represents in the courts of the United States: Provided, That any money judgment against such labor organization shall be enforceable only against the organization as an entity and against its assets, and shall not be enforceable against any individual member of his assets.

"(c) For the purposes of this section, district courts shall be deemed to have jurisdiction of a labor organization (1) in the district in which such organization maintains its principle office, or (2) in any district in which its duly authorized officers or agents are engaged in promoting or protecting the interests of employee members. The service of summons, subpena, or other legal process upon such officers or agent shall constitute service upon the labor organization."

gress). But in his testimony before the Committee, Rep. Case made clear that under that proposal, as under its predecessor, individuals would *not* be subject to suit for damages, but instead would be subject to discharge:

> [U]nder H.R. 725 . . . there is no provision for suing individual workers, as such, or ordering any judgment against them.
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> But, of course, . . . under that provision relating to unfair labor practices, and the powers given to the National Labor Relations Board, [employers] can proceed to deny recognition and deny the benefits of the Wagner Act to the member of the wildcat strike. [House hearings at 125.]

When pressed by Rep. Hoffman, a member of the Committee, as to whether damages should be recoverable from union leaders who call a strike in breach of contract where the union itself has no assets, Rep. Case responded as follows:

> Of course, there are other provisions. If they did that they would lose their status as a labor organization.
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> MR. HOFFMAN: That does not put dollars in the treasury of the employer.
>
> MR. CASE: No; but I do not think you are going to get anywhere in this workmen's legislative problem if you are going to resurrect such a situation as in the Danbury Hatters' case. We are going to have to live with any legislation you enact, and it seems to me what you need to do is enact legislation that will stand up and with which you can live. The bill would protect the employer in getting other employees. [*Id.* at 136.]

At the conclusion of the hearings, the Committee drafted a bill which followed Rep. Case's recommendation. Three provisions of that bill have particular relevance here:

First, the Committee bill would have amended § 7 of the NLRA to make explicit that the "concerted activities" protected by that Act did not include "violations of collective-bargaining agreements." (Legislative History of the Labor Management Relations Act of 1947 (G.P.O., 1948) at 49. Hereafter "Leg. Hist.") The Committee Report explained that the Committee "has revised this section by writing into it in express terms that employees who strike or engage in similar activities in violation of collective-bargaining agreement . . . forfeit the protection of the Labor Act." (Leg. Hist. at 318.)

Second, the Committee proposed a section which would create a federal cause of action for breach of a collective-agreement (Leg. Hist. at 94-95.) The language of this proposed section [12] was almost identical to the language sug-

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[12] "EQUAL RESPONSIBILITY AND LIABILITY

"SEC. 302. (a) Any action for or proceeding involving a violation of an agreement between an employer and a labor organization or other representative of employees may be brought by either party in any district court of the United States having jurisdiction of the parties, without regard to the amount in controversy, if such agreement affects commerce, or the court otherwise has jurisdiction of the cause.

"(b) Any labor organization whose activities affect commerce shall be bound by the acts of its agents, and may sue or be sued as an entity and in behalf of the employees whom it represents in the courts of the United States. Any money judgment against a labor organization in a district court of the United States shall be enforceable only against the organization as an entity and against its assets, and shall not be enforceable against any individual member of his assets.

"(c) For the purposes of actions and proceedings by or against labor organizations in the district courts of the United States, district courts shall be deemed to have jurisdiction of a labor organization (1) in the district in which such organization maintains its principal office, or (2) in any district in

gested to the Committee by Rep. Case (See p. 17, n. 11 *supra.*) The Committee report made clear that the purpose of the proposed section was, as its caption stated, to impose "equal responsibility and liability" on labor unions:

> Section 302 deals in improved form with another subject which was included in last year's Case bill. It provides that actions and proceedings involving violations of contracts between employers and labor organizations may be brought *by either party* in any district court of the United States having jurisdiction of the parties . . .
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> When labor organizations make contracts with employers, such organizations should be subject to the same judicial remedies and processes in respect of proceedings involving violations of such contracts as those applicable to all other citizens. Labor organizations cannot justifiably ask to be treated as responsible contracting parties unless they are willing to assume the responsibilities of such contracts to the same extent as the other party must assume his. [Leg. Hist. at 336-37].

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which its duly authorized officers or agents are engaged in representing or acting for employee members.

"(d) The service of summons, subpena, or other legal process of any court of the United States upon an officer or agent of a labor organization, in his capacity as such, shall constitute service upon the labor organization.

"(e) In actions and proceedings involving violations of agreements between an employer and a labor organization or other representative of employees, the provisions of the Act of March 23, 1932, entitled 'An Act to amend the Judicial Code and to define and limit the jurisdiction of courts sitting in equity and for other purposes', shall not have any application in respect of either party."

Once again it is plain that "parties" refers exclusively to employers and unions. (See pp. 9-10 *supra.*)

Finally, in § 12 of the Committee bill, the Committee created a damage action against any *person* engaging in an "unlawful concerted activity." (Leg. Hist. at 77-79.) Significantly, a wildcat strike was *not* defined as "unlawful concerted activity" for purposes of this section (even though such a strike was not protected concerted activity under § 7). Rather, the activities made unlawful by this section were in the nature of torts not breachs of contract.

None of these three aspects of the Committee bill generated significant discussion on the House floor. The bill was passed by the House without any change in these provisions (Leg. Hist. at 158-225.)

2. *Senate Consideration*

At the same time that the House Committee held its hearings, the Senate Committee on Labor and Public Welfare conducted hearings on two bills, one of which (S.55) had been introduced by Senators Ball, Taft and Smith. (Hearings on Labor Relations Program before the Senate Committee on Labor and Public Welfare, 80th Cong. 1st. Sess. (1947).) That bill contained a provision, captioned "Suits by And Against Labor Organizations,[13] which was

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[13] SUITS BY AND AGAINST LABOR ORGANIZATIONS

"SEC. 302. (a) Suits for violation of contracts concluded as the result of collective bargaining between an employer and a labor organization representing employees in an industry affecting commerce as defined in this Act may be brought in any district court of the United States having jurisdiction of the parties.

"(b) Any labor organization which represents employees in an industry affecting commerce as defined in this Act shall be bound by the acts of its duly authorized agents acting

virtually identical to "Amendment No. 3" which the same Senators had authored one year earlier. (See pp. 10-11, n. 8; 14.)

The bill reported by the Senate Committee followed the principles of the "Suits by and Against Labor Organizations" provision in the Ball-Taft-Smith bill. The Senate Committee bill would have amended the NLRA to make strikes in breach of contract an unfair labor practice. (S.1126, §§ 8(a)(6), 8(b)(5), Leg. Hist. at 112-14.) And the bill contained (as § 301) a provision, still entitled "Suits by and Against Labor Organizations," which paralleled the provision in S.55.[14] The Committee report explained

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within the scope of their authority from the said labor organization and may sue or be sued in its common name in the courts of the United States: Provided, That any money judgment against such labor organization shall be enforceable only against the organization as an entity and against its assets, and shall not be enforceable against any individual member or his assets.

"(c) For the purposes of this section district courts shall be deemed to have jurisdiction of a labor organization (1) in the district in which such organization maintains its principal office, or (2) in any district in which its duly authorized officers or agents are engaged in promoting or protecting the interests of employee members. The service of summons, subpena, or other legal process upon such officer or agent shall constitute service upon the labor organization.

"(d) Any employee who participates in a strike or other interference with the performance of an existing collective-bargaining agreement, in violation of such agreement, if such strike or interference is not ratified or approved by the labor organization party to such agreement and having exclusive bargaining rights for such employee, shall lose his status as an employee of the employer party to such agreement for the purposes of sections 8, 9, and 10 of the National Labor Relations Act: Provided, That such loss of status for such employee shall cease if and when he is reemployed by such employer."

[14] "TITLE III

that the purpose of the section was to "make[] collective-bargaining contracts equally binding and enforceable on both parties." (Leg. Hist. at 421.) And the Report noted that "the property of the individual members of the organization would not be subject to any liability" in an action against the union. (*Id.* at 422.)

During the course of the Senate floor debates on the Committee bill, its proponents went to pains to emphasize the limited nature of the proposed § 301. For example, Senator

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"SUITS BY AND AGAINST LABOR ORGANIZATIONS

"SEC. 301 (a) Suits for violation of contracts concluded as the result of collective bargaining between an employer and a labor organization representing employees in an industry affecting commerce as defined in this Act may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or wihout regard to the citizenship of the parties.

"(b) Any labor organization which represents employees in an industry affecting commerce as defined in this Act may sue or be sued in its common name in the courts of the United States: Provided, That any money judgment against such labor organization shall be enforceable only against the organization as an entity and against its assets, and shall not be enforceable against any individual member or his assets.

"(c) For the purposes of this section district courts shall be deemed to have jurisdiction of a labor organization (1) in the district in which such organization maintains its principal office, or (2) in any district in which its duly authorized officers or agents are engaged in promoting or protecting the interests of employee members. The service of legal process upon such officer or agent shall constitute service upon the labor organization and make such organization a party to the suit."

Subsection (d) of the analogous provision in S.55—the subsection expressly authorizing discharges of wildcat strikers—was not contained in § 301 of the Committee bill. That end was accomplished in the Committee bill by making strikes in breach of collective agreements unfair labor practices and thus unprotected.

Ball in the statement quoted by the *Atkinson* Court (p. 3 *supra*), said also:

> [W]e give to employers the right to sue a union in interstate commerce, in a Federal court, for violation of contract. *It* [*§ 301*] *does not go beyond that.* [*Id.* at 1497 (emphasis added).]

The theme of the Senator's entire explanation of his proposed substitute was that "it is not an employer's bill" but rather designed to "protect the public" and to "protect the rights and freedoms of individual employees." (Leg. Hist. 1495-96.)

Senator Smith had earlier made a similar statement:

> [T]itle III . . . merely provides for suits by and against labor organizations, and requires that labor organizations, as well as employers, shall be responsible for carring out contracts legally entered into as the result of collective bargaining. *That is all title III does.* [*Id.* at 1145 (emphasis added).]

No Senator suggested that § 301 could provide a basis for suing individual employees for damages.

While the Committee bill was before the Senate, Senator Taft offered a floor amendment which, like § 12 of the House bill, would have established a damage action against individuals who engage in certain types of unlawful activities. (Leg. Hist. at 1346.)[15] But like § 12, the Taft amend-

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[15] Senator Taft offered his amendment as a substitute for an amendment offered by Senator Ball which would have authorized injunctive as well as damage actions against the conduct proscribed by the amendment. (Leg. Hist. at 1323-24.) Senator Taft explained that while he personally favored the Ball amendment, he had concluded that "the welfare of the entire bill" would be jeopardized by passage of that amendment and accordingly had reach a compromise with Senator Ives of New York pursuant to which the Taft amendment was offered. (*Id.* at 1365-66.)

ment would *not* have applied to wildcat strikes in breach of collective agreements, but rather was limited to such activities as secondary boycotts and jurisdictional strikes. Moreover, during the course of the debate over his amendment, Senator Taft altered it to authorize damage actions only against unions and *not* against individual employees. The debate made clear that this change was made precisely because the amendment—*unlike* § *301*—would have imposed liability on employees individually, a far-reaching step the Senate was not prepared to take:

> MR. MORSE: . . . [T]he proposal of the Senator from Ohio would open wide the doors of the Federal courts to damage suits against any person who engaged in a strike or attempted to persuade other employees to engage in a strike for one of the prohibited objectives. The proposal very definitely would take us back at least 40 years and we would again have the spectacle of mass suits against employees, similar to the infamous Danbury Hatters case. Senators will recall that in that case some 150 members of the union were sued by their employer and the Supreme Court of the United States sustained a judgment against them in the neighborhood of a quarter million dollars. As a matter of fact the proposal would make it substantially easier to maintain a damage suit than was the case under the Sherman Act . . .
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> It also should be pointed out that the substitute proposal is inconsistent with the present provision in the bill allowing a union to be sued for breach of contract.

This is one of a number of points in the debates at which supporters of the bill made clear that, in anticipation of a possible veto, the bill was being shaped to attract sufficient support to enable the Congress to override the veto. This pervasive concern of the sponsors was recognized in *Pipefitters* v. *United States*, 407 U.S. 385, 409, and in the cases there cited. (See also, e.g., Leg. Hist. at 881-82, 883-84 (Rep. Hartley).)

Section 301 of the bill permits suits against labor organizations only, whereas the substitute proposal allows damage suits against "any person." Also, section 301 limits recovery to the assets of the union. The substitute allows the attachment of employees' bank accounts and all their property.

MR. TAFT: Mr. President, will the Senator yield?

MR. MORSE: I yield to the Senator from Ohio.

MR. TAFT: On request by the Senator from New York [Sen. Ives] and others who raised the point, I am amending the proposal, by striking out the word "person," in the second line, and inserting in lieu thereof "labor organization," so the action will be open only against labor organizations promoting this type of strike.

MR. MORSE: I want to say, Mr. President, that I am very glad the Senator from Ohio is agreeing, at least, to remove my first objection to the amendment. I shall not press the argument on that point, other than to say that had it remained as it was submitted to the Senate, we should have been back to the Danbury Hatters' case of 40 years ago. [*Id.* at 1357-58 (emphasis added).]

This discussion is important not because of Senator Morse's views, since he opposed the bill, but because Senator Taft accepted those views on the meaning of § 301 and amended the proposed § 303 to limit the latter's thrust to that of § 301 as explicated by Senator Morse.

As modified by Senator Taft, the amendment he proposed was approved as § 303 of the bill (*id.* at 1400), and the bill was thereafter approved by the Senate (*id.* at 1522).

3. *The Conference Report and the Presidential Veto*

Following passage by both Houses of a labor bill, a Conference Committee was convened; the Conference Report

eventually was enacted as the LMRA. The Conference Committee took two actions of relevance here:

First, the Committee deleted the provision of the House bill which had expressly made concerted activity in breach of a collective agreement unprotected.[16] But the Committee made clear that it did not disagree with the principle of this provision. Rather the provision was deleted only because it was "unnecessary" in light of recent decisions of the NLRB which had held that "strikes in violation of collective bargaining contracts were not concerted activities protected by the act, and refused to reinstate employees discharged for engaging in such activities." (Leg. Hist. at 542-43. See also *id.* at 563 (discussing § 13 and stating that the section provided in part "that nothing in the act was to affect the limitations or qualifications on the right to strike. . . .").)[17]

Second, the Conference Committee rejected § 12 of the House bill in favor of § 303 of the Senate bill, thereby refusing to create a damage action against *individual employees* for the conduct proscribed in those sections. The statement of the House Managers explained:

> Many of the matters covered in section 12 of the House bill are also covered in the conference agreement in different form, as has been pointed out above in the discussion of section 7 and section 8(b)(1) of the con-

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[16] The Conference Report also rejected the Senate provision making breaches of collective agreements unfair labor practices. The Report explained: "Once parties have made a collective bargaining contract the enforcement of that contract should be left to the usual processes of the law and not to the NLRB." (Leg. Hist. at 545.) (See *Dowd Box*, 368 U.S. at 510-511.)

[17] The Committee cited *Scullin Steel Co.*, 65 NLRB 1294 and *Joseph Dyson & Sons, Inc.*, 72 NLRB 445. See also *Mastro Plastics Corp.* v. *Labor Board*, 350 U.S. 270, 280, n. 10.

> ference agreement. Under existing principles of law developed by the courts and recently applied by the Board, employees who engage in violence, mass picketing, unfair labor practices, contract violations, or other improper conduct, or who force the employer to violate the law, do not have any immunity under the act and are subject to discharge without right of reinstatement. The right of the employer to discharge an employee for any such reason is protected in specific terms in section 10(c) [18]. Furthermore, under section 10(k) of the conference agreement, the Board is given authority to apply to the district courts for temporary injunctions restraining alleged unfair labor practices temporarily pending the decision of the Board on the merits. [Leg. Hist. at 563.] [19]

Thus, that Committee decided to rely on the remedy of discharge, rather than on damage actions, to deal with misconduct by employees. (Of course, even under the House bill, the § 12 damage action would not have reached wildcat strikes; as to such strikes, the House had itself decided to rely on the remedy of discharge. (See p. 21 *supra*).)

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[18] Section 10(c) to which the Committee referred, provides in part as follows:

> No order of the Board shall require the reinstatement of any individual as an employee who has been suspended or discharged, or the payment to him of any back pay, if such individual was suspended or discharged for cause.

[19] The deletion of the damage action against individuals and the limitation on the types of conduct which could give rise to a damage action against a labor union were just two of a number of concessions made by the House conferees. During the House debate on the conference report, Rep. Hartley, responding to criticism that the conferees had compromised too much, explained that "there was no concession made except upon the assurance that it would provide us votes in another body to be certain that the legislation would be enacted into law." (Leg. Hist. at 883-84.)

Finally, the Conference Report resolved minor differences, not here pertinent, between the House and Senate versions of § 301, developing the language that was enacted into law.

The debates on the Conference Report in both Houses were brief. The only references to § 301 described it as a provision authorizing suits by and against labor organizations. (Leg. Hist. at 873 (Rep. Case), 1543 (Sen. Taft).) The Conference Report was adopted by both houses. (*Id.* at 899, 900, 1620-21.)

On June 20, 1947, President Truman vetoed the Taft-Hartley bill and transmitted a message to Congress explaining his decision. (*Id.* at 915-21.) Without debate, the House voted to override that veto. (*Id.* at 922-23.) Several days later, following brief debate, the Senate did likewise. (*Id.* at 1656-57.)

* * *

The foregoing recitation of the legislative history of § 301 in the 79th and 80th Congresses refutes petitioners' contention that

> there is nothing in the language of § 301 or its legislative history that indicates Congress intended to limit the type of relief available to the injured party to the collective bargaining agreement where the employees are not acting as agents of their union. [Pet. Br. 24]

And that history leaves no room for the proposition that allowing § 301 damage actions against individual employees would be sound policy. Petitioners' principle point—that ". . . Denial of a Damage Action Against the Individual Employees Leaves the Companies Without Any Monetary Remedy" (Pet. Br. 23 (Heading))—is reminiscent of Rep. Hoffman's objection that allowing employers to discipline employees "does not put dollars in the treasury of

the employer." Rep. Case's response was to adhere to the decision not to allow employer § 301 damage suits against individual employees and to emphasize the necessity of that limitation if "you are going to get anywhere in this workmen's legislative problem." (House Hearings at 136 quoted at p. 18 *supra.*) Congress in enacting § 301 endorsed Rep. Case's position. The legislature thereby set the policy of the Act that governs its proper construction and that precludes the "judicial inventiveness" of creating the damage remedy the "companies sought" unsuccessfully from the courts below. (Cf. Pet. Br. 20.)[20]

CONCLUSION

For the above stated reasons the judgment below should be affirmed.

Respectfully submitted

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[20] Petitioners fundamentally misconceive the judicial function in urging this Court to allow "a damage action in this case against employees" in order to "fill the void between *Atkinson* and *Carbon Fuel* [*Co.* v. *Mine Workers,* 444 U.S. 212]." (Pet. Br. 27.) In neither of those unanimous decisions did the Court realign the statutory provisions Congress had arranged; in both the Court ascertained and followed Congress' design. And the question of whether that design leaves a "void" that should be "filled" is for Congress, not the courts.